IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 453 of 1995

MOHAN LAL
V/S
BOARD OF REVENUE & ORS

Mr. RL JANGID, for the appellant / petitioner

Mr. BL CHOUDHARY, for the respondent
Mr. OP BOOB, AGA

Date of Order : 16.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioner seeking to challenge the order of the Assistant Colonisation Commissioner dated 18.8.87, Annex.2 and that of the Board of Revenue dated 12.11.93 Annex.4, and also seeks a direction to enter mutation of the land in question in favour of the petitioner.

The case of the petitioner, as alleged in the writ petition is, that the land in question was allotted on permanent basis to one Smt. Gawara. Then an application was filed by the petitioner before the Assistant Colonisation Commissioner being Annex.1, praying for entering mutation of the said land in his favour, on the ground that Gawara has bequeathed the land in question by executing a Will dated 9.1.79, and that she has already expired. On this application, proceedings were commenced, some statements

were recorded and the learned Assistant Colonisation Commissioner, vide Annex.2, cancelled the allotment standing in the name of Smt. Gawara, and directed the land to be reverted back to the State. Against this, an appeal was filed, and the learned Revenue Appellate Authority set aside the order dated 18.8.87, and remanded the case with a direction to record the name of the petitioner. It was found that the word "Will" included in Section 13 of the Colonisation Act was deleted in the year 1984, and therefore, the Will was liable to be given effect to. Against this judgment, State Government filed a second appeal before the Board of Revenue, and the Board of Revenue restored the order of the trial Court, vide judgment Annex.4. It was held, that the view taken by the Revenue Appellate Authority was contrary to the law laid down by the High Court in Dan Singh Vs. Board of Revenue & Anr., reported in 1988(2) WLN (Revenue) 40.

The impugned orders Annex.2 and 4 have been challenged on the ground that the provisions of Section 13 had undergone a change, and the learned Board of Revenue had taken a view earlier that, Will does amount to transfer, within the meaning of Section 13, but then that was overruled by the High Court, and it was contended, that the Will has been amended by Section 13 in the year 1984, and this aspect has been omitted to be considered by the Board of Revenue, as the judgments of the High Court

related to state of affairs, which prevailed prior to amendment. In substance, the submission is, that the amendment made in the year 1984 should be retrospectively applied, and the rights flowing from the Will should be recognised.

Other submission made is, that in any case since the petitioner is continuing in possession since long, in view of the judgments of Hon'ble the Supreme Court in Tej Singh Vs. State of Rajasthan reported in (1994)4 SCC 575, and Brij Lal Vs. Board of Revenue reported in AIR 1994 SC 1128, the impugned orders are liable to be set aside, and the petitioner is entitled to be continued on the land.

Learned counsel for the respondent, on the other hand, maintained his stand, by relying upon the judgments of this Court in Dan Singh's case, and the Division Bench Judgment of this Court in Dara Singh Vs. Mehar Singh, reported in 2001(5) WLC (Raj.) 17.

To this, learned counsel for the petitioner submitted, that in Kewal Chand Mimani Vs. S.K. Sen reported in AIR 2001 SC 2569, the Hon'ble Supreme Court has taken the view, that repeal connotes as if the repealed statute was never there on the statute book, and when by amendment of 1984 the word “Will” has been deleted, it tantamounts to repeal the existence of the word “Will”, while this aspect

has not been considered by the Division Bench of this Court. Then, relying on National Agricultural Co-operative Marketing Federation of India Ltd. & Anr. Vs. Union of India & Ors., reported in AIR 2003 SC 1329, it was submitted, that the deletion of the word “Will” under Section 13 was a curative legislation, and that was required to be retrospective.

I have considered the submissions.

So far Kewal Chand's case is concerned, that, in my view has no application to the present case, inasmuch as, in that case, Hon'ble the Supreme Court was considering the provisions of a temporary statute, which expired by efflux of time, and in that context, it was held, that the effect of repeal of such statute is, as if it never existed on the statute book, while the Colonisation Act is not a temporary statute, but is a permanent statute, and rights and liabilities of the parties, even in the event of repeal, are governed by the provisions of Section 6 of the General Clauses Act, unless otherwise provided for. Then so far National Agricultural Federation's case is concerned, that was a case, where the amendment was made to cure the effect of the judgment of Hon'ble the Supreme Court, and therefore, it was given retrospective effect, while in the present case, it cannot be said, that the amendment is a curative legislation, within the meaning contemplated by

Hon'ble the Supreme Court, in National Agricultural Federation's case. Therefore, these two judgments are of no assistance to the petitioner. In that background, a look at the judgment of this Court, specially in Dara Singh's case, which is a Division Bench Judgment, and approves the judgment of the Single Bench in Dan Singh's case, does show, that the provision in the statute, as is existed at that time has been found to be valid, and the subsequent amendment was considered, and was found to be not capable of effecting the out come. In that case, it was a positive fact on record, that the testator had died prior to the introduction of the amendment in Section 13, inasmuch as, the mutation was effected on the basis of the Will even after remand, on 12.7.82, and the Division Bench also considered the validity of this provision, and found it to be unchallengeable.

It is true that Will takes effect on the death of the testator, and it is always open to the testator, to any time make a fresh Will before his death. In that view of the matter, if the petitioner would have been able to show, that the testator had died after the Amendment came into force, then perhaps something could have been said in favour of the petitioner, but here is a case, where even in the application, the petitioner had not shown, or disclosed, as to when Smt. Gawara died, in other words, it is not shown that she died after the commencement of the

Amendment. This application was filed on 3.10.85. On my query, learned counsel for the respondent informed, that as a matter of fact Smt. Gawara had died on 19.12.81, as is clear from the death certificate in his possession. I however need not take cognizance of that death certificate, being not on record. At the same time the fact does remain, that there is nothing placed on record, or even shown, on the side of the petitioner, to the effect, that Gawara died after commencement of the Amendment, and unless it is shown, on the face of judgments of this Court in Dara Singh's case and Dan Singh's case, the petitioner cannot get any right.

So far as the two judgments cited by the learned counsel for the petitioner, in Brij Lal's case and Tej Singh's case are concerned, those judgments are off the mark, inasmuch as, in Tej Singh's case, when the allotment was made, at a point of time, when the provision inserted in 1972 did not exist, and the cancellation was upheld by Hon'ble the Supreme Court, however, it was found, that the petitioner was agriculturist, continuing to cultivate the land personally for last 20 years, and having developed the land from loans, despite the cancellation of allotment being valid, that was set aside by Hon'ble the Supreme Court, exercising powers under Article 142 of the Constitution. Likewise, in Brij Lal's case also it was found, that it was not shown that the petitioner had

procured allotment by giving any false declaration about his age, and it was found, that he is cultivating the land since 1970, which position was not disturbed. Suffice it to say, that both these orders have clearly been passed by Hon'ble the Supreme Court, by exercising powers under Article 142 of the Constitution, which powers are not enjoyed by this Court.

Hon'ble the Supreme Court in Delhi Administration Vs. Manohar Lal reported in JT 2002(6) SC-325, while setting aside the order of the High Court, in para-5, has observed that apparently the learned judge in the High Court was merely swayed by considerations of judicial comity and propriety, and failed to see, that merely because the Supreme Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers, under the statutory laws of the land, could not afford to assume to itself the powers and jurisdiction to do the same, or similar, things. It was further observed, that the High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision, and ascertain the law, if any, so declared from a

careful reading of the decision concerned, and only thereafter proceed to apply it appropriately to the cases before them.

In that view of the matter, as directed by Hon'ble the Supreme Court in Delhi Administration's case, even on the considerations of comity or even judicial propriety, the recourse adopted by Hon'ble the Supreme Court in Kewal Chand's case and Brij Lal's case cannot be adopted by this Court, exercising jurisdiction under Article 226, unless there being any such power under law, authorising this Court to take this recourse. It is a different story that in para-9 of the impugned order, even the Board of Revenue itself has already shown benevolence, by observing, that even now if the petitioner feels proper, he would be entitled to file application before the Collector, under Section 13-A of the Colonisation Act.

The net out come of the aforesaid discussion is, that I do not find any error in the judgment of the Board of Revenue Annex.4, which is duly supported by the Division Bench Judgment of this Court in Dara Singh's case. The writ petition thus, has no force and is dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

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